

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of

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Implementation of Section 9
of the Communications Act

Assessment and Collection of
Regulatory Fees for the 1994
Fiscal Year

MD Docket No. 94-19

PETITION FOR RECONSIDERATION OF NYNEX CORPORATION

NYNEX Corporation (hereinafter "NYNEX"), on behalf of NYNEX Mobile Communications Company, respectfully submits this Petition for Reconsideration of the Report and Order released by the Commission on June 8, 1994 in the above-captioned proceeding.

I. INTRODUCTION AND SUMMARY OF ARGUMENT

In the Order, the Commission adopted rules designed to implement Section 9 of the Communications Act of 1934.¹ Section 9 authorizes the Commission to prescribe appropriate rules and regulations to enable the Commission to assess and collect annual fees from common carriers, cable television

¹ Pub. L. No. 103-66, Title VI, § 6002(a), 107 Stat. 397.

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operators and other regulated communications entities to recover costs associated with the Commission's enforcement and regulatory activities.²

NYNEX does not oppose the adoption of rules designed to ensure that fees are collected in a manner that is easy to comply with and administer. We object, however, to the requirement that cellular carriers disclose the actual number of their subscribers on a system-by-system basis for purposes of fee calculation. This requirement is not only unnecessary to the fee collection process, it will inhibit competition between cellular carriers by requiring the disclosure of confidential business data. The Commission should reconsider this aspect of the Order and revise its rules to safeguard the confidentiality of this data. Specifically, in order to avoid the disclosure of market share and other commercially sensitive data, the Commission should amend Section 0.457 of its rules to apply affirmative safeguards against public disclosure of market-specific subscriber data contained in carrier's fee payment reports. Alternatively, the Commission must permit carriers to compile and report fee payment data at an aggregated holding company level.

² Section 9 is codified at 47 U.S.C. § 159.

II. THE COMMISSION MUST MODIFY THE RULES TO SAFEGUARD
CONFIDENTIAL DATA

The Order requires that cellular carriers disclose the actual number of their subscribers on a system-by-system basis for purposes of fee calculation. While carriers routinely release information about the number of subscribers served in aggregated or consolidated form,³ the number of customers served within a particular market is confidential information that would not be made publicly available but for the fee remittance form. The disclosure of such commercially sensitive information would clearly provide competitors with data that could be used to stimulate marketing and other activity that would not have occurred in the absence of that data. As a result, market-specific data disclosed on fee remittance forms could be used by some parties to thwart competition. Although the Order provides that carriers may request confidential treatment of competitively sensitive information or any data that is not currently provided to the public under Section 0.459 of the Commission's rules,⁴ this approach is simply insufficient to afford the necessary assurance that confidential treatment will be afforded to sensitive information.

Section 0.459 does not create an affirmative safeguard against disclosure. On the contrary, that Section merely

³ Aggregated subscriber data is publicly available in a number of different state and federal filings, including, for example, SEC authorizations and annual reports.

⁴ Order at para. 110.

permits persons submitting data to request that such data not be made routinely available for public inspection. Thus, Section 0.459 creates a presumption against confidentiality that must be rebutted on a case-by-case basis. This approach does little to allay carriers' concerns about confidential information. Indeed, this approach is likely to generate multiple proceedings initiated by parties who wish to protect commercially sensitive information and those who wish to use confidential information to the disclosing party's disadvantage.

The Commission should amend Section 0.457 of its rules to add a provision that specifically protects from public disclosure market-specific subscriber data contained in carrier's fee payment reports. This approach would affirmatively safeguard the confidentiality of competitively sensitive data submitted with fee payments without compromising the fee collection process.

Requiring disclosure of the actual number of subscribers on a system-by-system is not necessary for purposes of fee calculation. As the Commission notes in the Order,⁵ it can always perform random, periodic audits of the carriers' records to determine whether carriers are reporting the correct number of subscribers.

Wherefore, for the reasons set forth above the Commission should reconsider its Order as requested herein.

⁵ Order at para. 86.

Alternatively, the Commission should give carriers the option of filing reports on a consolidated, or aggregated, holding company basis rather than by separate market or by call sign.

Respectfully submitted,

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Dated: July 18, 1994

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing PETITION FOR RECONSIDERATION OF NYNEX CORPORATION, was served by first class United States Mail, postage prepaid, on each of the parties indicated on the attached service list, this 18th day of July, 1994.


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